

Department of Energy

§ 719.47

§ 719.45 Are there any special procedures or requirements regarding subcontractor and retrospective insurance carrier legal costs?

(a) The contractor shall establish a monitoring system for significant matters in litigation which are handled by subcontractors other than retrospective insurance carriers whose contracts provide for the reimbursement of legal costs. The purpose of this monitoring system is to enable the contractor to be regularly informed of the progress of the Significant Matter, to monitor the associated costs and help ensure that they are reasonable, and to report on the progress of the Significant Matter and the associated costs to Department Counsel.

(b) The contractor shall require retrospective insurance carriers and other subcontractors whose contracts provide for the reimbursement of legal costs to request prior permission from the contractor to enter into a settlement agreement with, or make any payments to, claimants or third-parties if:

(1) In the case of a subcontractor other than a retrospective insurance carrier, the settlement or payment amount is likely to reach \$25,000 or more; or

(2) In the case of a retrospective insurance carrier, the settlement or payment amount is likely to reach \$100,000 or more.

(c) The contractor shall require the insurance carrier or other subcontractor to submit all documentation described in § 719.34 and to provide the contractor with a copy of the executed settlement agreement within seven days of execution, which the contractor will promptly forward to Department Counsel. The contractor shall not authorize the subcontractor to enter into a settlement agreement or make a payment to a claimant or third-party that is likely to reach or exceed the above-stated threshold amounts without first obtaining the approval of the Department Counsel.

(d) Upon request from Department Counsel, the Contracting Officer, or other authorized representative of the Department, the contractor shall provide detailed cost information regarding particular legal matters handled by

retrospective insurance carriers or other subcontractors whose contracts provide for the reimbursement of legal costs.

(e) The contractor shall provide reviewed costs and status updates for all significant matters in litigation handled by subcontractors whose contracts provide for the reimbursement of legal costs in accordance with § 719.51. The contractor is not required to provide cost and status updates for matters handled by retrospective insurance carriers except upon the written request of the cognizant Contracting Officer or Department Counsel.

§ 719.46 Are costs covered by this part subject to audit?

All costs covered by this part are subject to audit by the Department, its designated representative, or the Government Accountability Office. See § 719.21.

§ 719.47 What happens when more than one contractor is a party to a matter?

(a) If more than one contractor is a party in a particular matter and the issues involved are similar for all the contractors, a single legal counsel designated by the General Counsel must either represent all of the contractors or serve as lead counsel, when the rights of the contractors and the Government can be effectively represented by a single legal counsel, consistent with the standards for professional conduct applicable in the particular matter. Contractors may propose to the General Counsel their preference for the individual or law firm to perform as the lead counsel for a particular matter.

(b) If a contractor, having been afforded an opportunity to present its views concerning joint or lead representation, does not acquiesce in the designation of one retained legal counsel to represent a number of contractors, or serve as lead counsel, then the legal costs of such contractor are not reimbursable by the Department, unless the contractor demonstrates that it was reasonable for the contractor to incur such expenses.